

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

TIMOTHY J. MEAGHER, a
Michigan Resident,

Plaintiff,

vs.

Case No. 2003-4321-CK

PAUL A. LAFONTAINE, SR.,
a Michigan Resident,

Defendant.

OPINION AND ORDER

This matter is before the Court on remand for further proceedings pursuant to the Court of Appeals's January 31, 2006 unpublished decision.

I.

Plaintiff Timothy J. Meagher ("Meagher"), a real estate broker, alleges that on December 16, 1999, the parties executed an Agreement under which he was to enter into a formal asset or stock purchase agreement as to substantially all of the assets of an automobile dealership known as Romeo Ford, Inc. He alleges that he was to establish a limited liability company which would purchase the dealership and that defendant Paul A. LaFontaine, Sr. ("LaFontaine") was to provide all of the necessary funding to complete the transaction. Further, he alleges that he was to be compensated in the amount of \$200,000.00 for purchasing said dealership and conveying his interest therein to LaFontaine

Plaintiff alleges that on April 16, 2002, he entered into a Stock Purchase Agreement with Norman J. Brewer ("Brewer"), under which Brewer was to convey the outstanding shares of



stock of Romeo Ford, Inc. He further alleges that the Stock Purchase Agreement included a Property Purchase Agreement between himself and Brewer and Brewer's wife, with respect to certain property in Washington Township and Almont, which was to be used to operate a Ford dealership.

Additionally, Meagher alleges that on April 30, 2002, he assigned all of his rights under the Stock Purchase Agreement to New Romeo Ford, Inc. and that LaFontaine was the president of such company. He alleges that LaFontaine was to have purchased Romeo Ford, Inc., but that the closing never transpired due to LaFontaine's failure to take reasonable efforts to consummate the transaction. Meagher brought a claim for breach of contract, as well as a claim for fraud and misrepresentation.

In the May 12, 2004 *Opinion and Order*, this Court considered the parties' competing motions for summary disposition pursuant to MCR 2.116(C)(10). After reviewing the terms of the Agreement, the Court denied Meagher's motion, but granted LaFontaine's request for relief. More specifically, the Court determined that, pursuant to the clear and unambiguous contractual language, LaFontaine's obligation to pay Meagher the \$200,000.00 would not be triggered until closing, which event failed to transpire. The Court did not address the issue of whether the contract had been rescinded inasmuch as the Court opined that such issue was moot in light of its other ruling.

However, the Court of Appeals found that the closing on the dealership purchase was not a condition precedent to LaFontaine's obligation to render payment. Instead, the appellate court held that payment was conditioned on Meagher's conveyance of his interest. Further, the Court of Appeals instructed this Court to consider whether the December 16, 1999 Agreement had

been rescinded pursuant to a settlement agreement in a separate action. *See* Macomb County Circuit Court Case No. 03-972-CK.

In particular, pages 2-3 of the appellate decision stated that:

...During separate litigation against the dealership owners for specific performance of the purchase agreement, both plaintiff and defendant agreed to rescind the "entire agreement" if they or the dealership owners rejected a determination by an independent CPA of the tangible net worth of the dealership. The parties do not dispute that the purchase agreement was ultimately rescinded. We note that the 1999 agreement between plaintiff and defendant was not rescinded by the parties within this separate litigation; therefore, we remand to the trial court to review the releases executed in the separate litigation to determine the potential affect on the present case and to determine what, if any, affect the rescission of the purchase agreement had on the 1999 agreement between plaintiff and defendant.

II.

On remand, the parties have once again brought competing motions for summary disposition.

Meagher contends that he is entitled to summary disposition pursuant to MCR 2.116(C)(9) and/or (10). It is his position that the Court of Appeals's decision compels an order granting summary disposition in his favor. He argues that the appellate decision specifically found that the December 16, 1999 Agreement had not been rescinded in the separate suit. Moreover, he points out that this Court was ordered to review the releases in the separate suit to determine whether they have any impact on the instant dispute. He submits that there are no releases for this Court to review inasmuch as there were no releases executed in the separate litigation involving the December 16, 1999 Agreement.

Conversely, LaFontaine asserts that he is entitled to summary disposition pursuant to MCR 2.116(C)(7) and/or (10). It is his position that the March 28, 2003 settlement agreement to rescind the underlying transaction in Case No. 03-972-CK resulted in an abrogation and

annulment of all prior agreements for the purchase of the dealership. According to LaFontaine, said rescission restored the parties to the positions which they occupied prior to the execution of the original purchase agreement for the assets of the dealership and the realty upon which the dealership was located. Accordingly, he also contends that the rescission abrogates and annuls the December 16, 1999 Agreement.

III.

At the outset, the Court will set forth the applicable standards of review.

In considering a motion brought under MCR 2.116(C)(7), the Court must accept as true all of the plaintiff's well-pled allegations and construe them in the plaintiff's favor. *Hanley v Mazda Motor Co*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence to determine whether there is a genuine issue of material fact. *Id.* Summary disposition is inappropriate where a material factual dispute exists such that factual development could provide a basis for recovery. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000).

The entry of summary disposition is appropriate under MCR 2.116(C)(9) if the defendant fails to plead a valid defense. A motion under subrule (C)(9) tests the sufficiency of the pleadings by accepting all well-pled allegations as true. The plaintiff will be entitled to relief if the defenses are so clearly untenable as a matter of law that no factual development could possibly deny the plaintiff's right to recovery. *Village of Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000).

In reviewing a motion brought under MCR 2.116(C)(10), the trial court must consider the pleadings, as well as any affidavits, depositions, admissions, and documentary evidence submitted by the parties. The evidence should be construed in the light most favorable to the

party opposing the motion. The motion should be granted if the evidence establishes that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. MCR 2.116(G)(4)-(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). It is not sufficient for the non-movant to promise to offer factual support for his position at trial. *Smith, supra*, at 457-458 n 2. Instead, the adverse party must produce evidence demonstrating that there is a genuine issue of material fact. MCR 2.116(G)(4).

IV.

Settlement Agreement in Separate Suit

Case No. 03-972-CK involved a claim by New Romeo Ford, Inc., RIC, LLC, and Meagher against Brewer and his wife. At issue were two agreements for the sale of the stock and land of Romeo Ford, Inc. to those plaintiffs. In this regard, the plaintiffs sought to enjoin the Brewers from breaching the Stock Purchase Agreement and the Property Purchase Agreement, as well as requested specific performance thereof.

LaFontaine ("LaFontaine") was not named as a party to that suit. However, the complaint alleged that LaFontaine¹ and Meagher created New Romeo Ford, Inc. for the purpose of purchasing all of the issued and outstanding shares of stock in Romeo Ford, Inc. It was alleged that LaFontaine was the president and a shareholder of New Romeo Ford, Inc., as well as a member of RIC, a Michigan limited liability company created to purchase the real property leased to Romeo Ford, Inc. and used by it in the operation of its dealership.

On March 28, 2003, the parties placed their settlement agreement on the record. Counsel for plaintiffs New Romeo Ford, Inc., RIC, and Meagher stated that the parties agreed to allow Mr. Carnoff to compute the tangible net worth in question, with both sides allowed to reject his

¹ While that complaint refers to an individual called "Paul LaFontaine" and the present complaint refers to an individual called "Paul A. LaFontaine, Sr.," the Court is satisfied that the two pleadings refer to the same person.

figure. *See* 3-28-03 Tr. at 5-6. Moreover, a rejection by either side would trigger a “rescission of the entire agreement.” [emphasis added]. *Id.* The Brewers’ attorney agreed with such representation of the settlement. *Id.* at 7. Meagher, LaFontaine, and Brewer all stated on the record that they understood the terms of the settlement. *Id.* at 8-12.

Impact on Present Action

After careful consideration, the Court is not persuaded by Meagher’s assertion that there is no applicable release to review on remand. In this regard, the Court points out that the instant controversy is so closely intertwined with the allegations in Case No. 03-972-CK as to compel a thorough review of the settlement agreement in the latter. The Court is mindful that said settlement may not have specifically referred to the December 16, 1999 Agreement at issue in the instant controversy. Notwithstanding, the Court is convinced that the terms of the settlement in Case No. 03-972-CK were broad enough to encompass the 1999 Agreement. More specifically, the Court finds that the parties’ failure to accept the CPA’s calculation in Case No. 03-972-CK triggered a rescission of the “entire agreement,” of which the 1999 Agreement was necessarily a part. In light of such rescission, LaFontaine is not obligated to render payment to Meagher in the matter at hand.

It therefore follows that LaFontaine is entitled to the entry of summary disposition in his favor pursuant to MCR 2.116(C)(7) and/or (10). *Hanley, supra; Smith, supra.*

V.

For the reasons set forth above, Meagher’s motion for summary disposition, pursuant to MCR 2.116(C)(9) and/or (10), is DENIED. LaFontaine’s motion for summary disposition, pursuant to MCR 2.116(C)(7) and/or (10), is GRANTED.

Pursuant to MCR 2.602(B), a judgment shall enter that is consistent with this *Opinion and Order*.

In compliance with MCR 2.602(A)(3), the Court finds that this decision resolves the last pending issue. This case shall close upon the entry of judgment.

IT IS SO ORDERED.

Diane M. Druzinski, Circuit Court Judge

Date:

JUN - 9 2008

DMD/aac

cc: David B. Timmis, Attorney at Law,
Robert J. Seibert, Attorney at Law

DIANE M. DRUZINSKI
CIRCUIT JUDGE

JUN - 9 2008

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: [Signature] **COUNTY CLERK**